U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

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DEC 02 200

FILE: [redacted] Office: LOS ANGELES, CA Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa and admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated October 17, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) abused its discretion by failing to consider all relevant factors and the cumulative effect of the factors. Counsel further contends that CIS did not provide a reasoned explanation for its conclusions. *Form I-290B*, dated November 12, 2003.

In support of these assertions, counsel submits a brief, dated November 12, 2003; a copy of the certified abstract of confidential marriage for the applicant and his spouse, dated October 25, 1995; a copy of the naturalization certificate of the applicant's spouse; a copy of a psychological evaluation of the applicant, his spouse and their child, undated and a copy of an affidavit of the applicant's spouse, dated January 23, 2001.

The record reflects that during 1992, the applicant failed to disclose his true identity in applying for a visa for admission into the United States and in presenting himself for admission to an immigration officer by using a passport in a name other than his own.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would suffer hardship as a result of relocation to the Philippines in order to remain with the applicant. Counsel asserts that the parents of the applicant's spouse reside in the United States and that the applicant's spouse herself has resided in this country since 1992. *Motion to Reconsider/Brief in Support of Appeal,* dated November 12, 2003. Counsel states that the applicant's son was born in the United States and has not resided anywhere else during his eight years of life. *Id.* Counsel indicates that country conditions in the Philippines are characterized by a high rate of unemployment and abundant poverty and that the applicant's native country also suffers from political instability. *Id.* Counsel contends that the applicant's spouse has no prospects for employment in the Philippines. *Id.*

Counsel fails to establish that the applicant's spouse will suffer extreme hardship if she remains in the United States maintaining her proximity to family members, gainful employment and residence in a politically stable country. Counsel asserts that the applicant's spouse suffers emotional and psychological hardship as a result of the applicant's inadmissibility to the United States. *Id.* Counsel submits a psychological evaluation for the applicant and his family indicating that the applicant's spouse is depressed, has trouble eating and sleeping and is distracted at work. *Psychological Evaluation of the Cristobal Family prepared by Karen Schneider-Webb, PhD,* undated. The evaluation diagnoses the applicant's spouse as suffering from a major depressive episode, severe and chronic; generalized anxiety disorder and acute stress disorder. *Id.* at 5. The evaluating mental health care professional indicates that counseling and psychotherapy are "definitely indicated." *Id.* The AAO notes that the record fails to establish an ongoing relationship between the applicant's spouse and a mental health professional. While the submitted evaluation provides information regarding the mental state of the applicant's spouse at an unidentified point in time, the record fails to provide the AAO with documentation of the psychological condition of the applicant's spouse over time including whether or not treatment and medication were prescribed to the applicant's spouse as recommended in the evaluation. The AAO is unable to render a finding of extreme psychological and emotional hardship to the applicant's spouse based on an isolated evaluation.

Counsel states that the applicant's spouse derives her health insurance from the employment of the applicant. *Motion to Reconsider/Brief in Support of Appeal.* Counsel indicates that the applicant's spouse and child will lose their health care benefits in the absence of the applicant. *Id.* The AAO notes, however, that the applicant's spouse states that she has excellent health care coverage through her employment. *Affidavit of Maria Jeaneth Cristobal*, dated January 23, 2001. The AAO finds that the assertion of counsel regarding health care is apparently factually incorrect and therefore unpersuasive.

Counsel asserts that the inadmissibility of the applicant will cause extreme financial hardship to the applicant's spouse and child if they remain in the United States in the absence of the applicant. *Id.* Counsel contends that the applicant's presence is required in order for his spouse to afford their home mortgage. *Id.* The AAO finds that the record fails to establish that the living arrangements of the applicant's spouse cannot be altered in order to accommodate a change in income. Further, the record fails to demonstrate that the applicant will be unable to provide financial support to his family from a location outside of the United States. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.